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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/440,149	11/15/99	NEELEY	A P112554

PM82/0609

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EXAMINER  
UNDERWOOD, D

ART UNIT	PAPER NUMBER
3652	

DATE MAILED:

*4*  
06/09/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No. 446149  
09/223417

Applicant(s) Neeley et al

Examiner Underwood

Group Art Unit  
3652

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to <sup>the application</sup> communication(s) filed on 11/15/99.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) 11, 12, 14-20 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-9, 13 is/are rejected.
- ☒ Claim(s) 10 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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Detailed Action

1. The status of parent case 09/233,417 should be kept current.
2. Claims 11, 12 and 14-20 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4 of parent case 09/233,471.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

4. (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.
5. Claims 1-9 and 13 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Eckloff et al.
6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-4, 7-9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over British reference 2,111,017 in view of Bean.

It would have been obvious to provide ~~the~~ wheels to the plates 36 in the British reference if desiring to transport the cover in view of the teaching in Bean. Note applicants claims do not preclude the second means from being wheels also.

Regarding claim 9, this claim does not preclude the use of two threaded members as used in the British reference.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over British reference 2,111,017 in view of Beam as applied to claim 4 above, and further in view of Schaller.

It would have been obvious to orient the wheel axes as claimed in view of the teaching in Schaller.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over British reference 2,111,017 in view of Beam as applied to claim 2 above, and further in view of Larsen.

It would have been obvious to use the wheels at one end and a pivot at the other end of the beam structure in the British reference in view of the wheels and pivot in Larsen (figure 9).

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11. Claims 1-9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over British reference 2,111,017 in view of Schaller.

It would have been obvious to provide wheels to the plates at one end of the beam structure and a pivot to the plate at the other end of the beam structure if desiring to pivot the cover away from the hole once lifted in view of the teaching of Schaller. Note 20 and 21 in Schaller.

Regarding claim 9, this does not preclude the use of two threaded members as used in the British reference.

12. The Eckloff et al reference is a U.S. patent that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the patent is claiming the same patentable invention, see MPEP 2306 and 37 CFR 1.601(n). The patent can be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for Information on initiating interference proceedings.

13. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. This is a continuation of applicant's earlier Application No. 09/233,417. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first

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action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication should be directed to Examiner Underwood at telephone number (703) 308-1113.

Underwood-Carmen

June 7, 2000

*Donald W. Underwood* 6/9/00  
DONALD W. UNDERWOOD  
PRIMARY EXAMINER